

IC 23-14-65

Chapter 65. City and Town Cemeteries

IC 23-14-65-1

"Cemetery board" defined

23-14-65-1 Sec. 1. As used in this chapter, "cemetery board" means:

- (1) the board to which the power to govern cemeteries is transferred under this chapter; or
- (2) if the power to govern cemeteries is not transferred under this chapter, the legislative body of a municipality.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-2

"Executive" defined

23-14-65-2 Sec. 2. As used in this chapter, "executive" means:

- (1) the mayor of a city; or
- (2) the president of the town council of a town.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-3

"Legislative body" defined

23-14-65-3 Sec. 3. As used in this chapter, "legislative body" means:

- (1) the common council or city-county council of a city; or
- (2) the town council of a town.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-4

"Municipality" defined

23-14-65-4 Sec. 4. As used in this chapter, "municipality" means a city or town.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-5

Application of chapter

23-14-65-5 Sec. 5. This chapter applies to all public cemeteries that are:

- (1) owned by a municipality; and
- (2) located within five (5) miles of the municipality.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-6

Powers and duties of legislative body

23-14-65-6 Sec. 6. (a) The legislative body of a municipality has control and management of a cemetery that is:

- (1) owned by the municipality; and
- (2) located within five (5) miles of the municipality.

(b) The powers and duties of the legislative body under this section include the following:

- (1) The collection, preservation, and payment of all money, funds, securities, obligations, and property of any kind related to cemetery purposes.
- (2) The protection of cemeteries and the sanctity of the dead.
- (3) The regulation or prohibition of the interment of bodies.
- (4) The authorization of the removal of buried bodies or whole cemeteries to some other place.

(c) The powers of the legislative body of a municipality under this section remain in effect by ordinance or resolution despite the repeal of Acts 1927, c. 7.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-7

Permanent maintenance fund

23-14-65-7 Sec. 7. (a) Part of the proceeds derived from the sale of lots within a cemetery to which this chapter applies may be set aside as a permanent maintenance fund.

(b) Not more than fifty percent (50%) of the proceeds from the sale of lots may be set aside as a permanent maintenance fund under this section.

(c) The income from a permanent maintenance fund established under this section shall remain in the fund, except as provided in subsection (d).

(d) If the revenue from the sale of lots and other income from a cemetery to which this chapter applies becomes insufficient to meet the expense of maintaining the cemetery, income derived from the fund and its accretions may be used in whole or in part as the needs of the cemetery require, after appropriation by the legislative body according to statute.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-8

Gifts, donations, bequests, or devises

23-14-65-8 Sec. 8. (a) The legislative body of a municipality may by ordinance or resolution accept gifts, donations, bequests, or devises of money or real or personal property for the use of the:

- (1) cemetery; or
- (2) permanent maintenance fund of the cemetery.

(b) Except as provided in subsection (c), a municipality shall use:

- (1) gifts, donations, bequests, or devises accepted under subsection (a); and
- (2) income or interest derived from the gifts, donations, bequests, or devises;

in the same manner as the municipality uses proceeds from the sale of lots.

(c) If a gift, donation, bequest, or devise of money or real or personal property is given or made for the use of a particular lot or plot of ground, the income from the gift, donation, bequest, or devise may be used only for the upkeep and maintenance of that particular lot or plot of ground.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-9

Transfer of control and management to public works or public works and safety board

23-14-65-9 Sec. 9. A city may, by ordinance, transfer the control and management of a cemetery to which this chapter applies to the:

- (1) board of public works; or
 - (2) board of public works and safety;
- of the city.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-10

Transfer of control and management to board of trustees

23-14-65-10 Sec. 10. (a) A city or a town may, by ordinance, transfer the control and management of a cemetery to which this chapter applies to a board of trustees.

(b) The ordinance transferring the control and management of a cemetery under subsection (a) must prescribe:

- (1) the organization of the board; and
- (2) the duties of the officers and members of the board.

(c) Members of a board of trustees established under subsection (a) shall be appointed from the lot owners of the cemetery who are residents of the county in which the cemetery is located.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-11

Transfer of control and management to board of cemetery regents; board members

23-14-65-11 Sec. 11. (a) A city or town may, by ordinance, transfer the control and management of a cemetery to which this chapter applies to a board composed of four (4) residents of the municipality. Not more than two (2) of the residents appointed may be members of the same political party.

(b) Each board member appointed to the board established under subsection (a) must:

- (1) own a lot in the cemetery or cemeteries to which this chapter applies; or
- (2) be a freeholder of the municipality.

(c) The executive of the municipality shall appoint the members of the board established under subsection (a) to initial terms as follows:

- (1) one (1) member for a term of one (1) year;
- (2) one (1) member for a term of two (2) years;
- (3) one (1) member for a term of three (3) years; and
- (4) one (1) member for a term of four (4) years.

(d) Each member appointed under this section serves until the member's successor is appointed and qualified. After the initial term referred to in subsection (c), the member, if reappointed, or the member's successor serves for a term of four (4) years.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-12

Board of cemetery regents; members; vacancy; quorum; removal

23-14-65-12 Sec. 12. (a) A board appointed under section 11 of this chapter is known as "The Board of Cemetery Regents of the City (Town) of _____, Indiana".

(b) The officers of a board of cemetery regents consist of:

- (1) a president;
- (2) a vice president; and
- (3) a secretary;

who shall be elected by the board members at the first meeting of the board and in each subsequent year.

(c) A vacancy on a board of cemetery regents shall be filled by appointment by the executive of the city or town. The person appointed serves until the expiration of the term of the member whom the appointee is appointed to replace.

(d) Each member of a board of cemetery regents:

- (1) must take and subscribe to the usual oath of office before beginning the duties of office; and
- (2) shall be issued a certificate of appointment, upon which the member's oath of office must be endorsed.

(e) A new member of a board of cemetery regents shall file the certificate of appointment with the clerk or clerk-treasurer of the municipality within thirty (30) days after the beginning of the new member's term. If an individual who is appointed to a board of cemetery regents violates this subsection, the individual is considered to have declined the appointment and, the office to which the individual was appointed is vacant.

(f) A majority of the members of a board of cemetery regents constitutes a quorum. An action of the board is binding only if:

- (1) it is authorized by a vote taken at a regular or special meeting of the board; and
- (2) a majority of all the members of the board vote in favor of the action.

(g) If there is a tie vote or equal division among the members of the board upon any motion, resolution, or action, the executive of the municipality is entitled to vote on the matter under consideration.

(h) The executive of a municipality may, at any time, remove a member of the board from office upon filing the reasons for the removal in writing with the clerk or clerk-treasurer of the municipality.

(i) The legislative body of the municipality may authorize compensation for actual expenses incurred by members of the cemetery board in performance of their official duties, including any additional compensation that the legislative body determines.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-13

Notice of proposed transfer of management and control; hearing

23-14-65-13 Sec. 13. (a) Before adopting an ordinance transferring its powers and duties over a cemetery under section 9, 10, or 11 of this chapter, the legislative body of a municipality must first give notice of its intention by notice published once each week for two (2) weeks in accordance with IC 5-3-1. The notice must announce a hearing at which the legislative body will hear any objections by any taxpayer or owner of a lot in the cemeteries.

(b) The hearing referred to in subsection (a) must:

- (1) be set for a date at least two (2) weeks after the first publication of the notice;
- (2) be held at a designated location; and
- (3) provide all taxpayers or owners of lots in the cemeteries an opportunity to be heard.

(c) The legislative body shall give careful consideration to the views of the lot owners and taxpayers as expressed at the hearing referred to in subsection (a). Not less than five (5) days after the hearing, the legislative body shall adopt or defeat the ordinance under which its powers and duties over a cemetery would be transferred.

(d) If the ordinance referred to in subsection (c) is adopted, all papers and documents appropriate for the transfer of the management and control of the property or properties must be executed in behalf of the municipality by:

- (1) the executive and clerk or clerk-treasurer of the municipality; and
- (2) the agents of the cemetery.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-14**Bond**

23-14-65-14 Sec. 14. Each officer and employee whose duty includes handling any funds in carrying out this chapter shall, in the manner prescribed by IC 5-4-1, execute an official bond before beginning the duties of office or employment.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-15**Powers of cemetery board**

23-14-65-15 Sec. 15. A cemetery board may:

- (1) make all necessary rules and regulations for the management of the cemetery or cemeteries over which it has control and management;
- (2) sell lots or parts of lots at prices that the board considers reasonable; and
- (3) require payment for sales:
 - (A) in cash; or
 - (B) partly in cash and the balance in deferred payments spread over a time the board considers reasonable.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-16

Execution of deed; requirements for deferred payment sales

23-14-65-16 Sec. 16. (a) In the case of cash sales of lots under section 15 of this chapter, a deed to the property sold shall be executed on behalf of the municipality by the cemetery board to the purchaser.

(b) The following requirements apply to sales of lots under section 15 of this chapter that are made on a deferred payment basis:

- (1) The transaction shall be evidenced by a written contract of sale executed by and between the board and the purchaser.
- (2) Title to the lot shall be reserved in the municipality until the purchase price is paid in full.
- (3) If the purchaser dies before payment in full has been completed, but after at least fifty percent (50%) of the purchase price has been paid, the balance of the purchase price shall be canceled and a deed for the property shall be executed by the cemetery board on behalf of the municipality to the heirs of the purchaser.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-17

Employment of agents and employees; collection and receipt of money

23-14-65-17 Sec. 17. A cemetery board:

- (1) may employ agents for the sale of cemetery lots or part of lots and pay the agents compensation for services that the board considers reasonable;
- (2) may employ all necessary superintendents, attorneys, engineers, and other employees and discharge them at the board's pleasure;
- (3) may collect and receive all money owed for:
 - (A) the sale of lots;
 - (B) the care of lots;
 - (C) the care of graves;
 - (D) the digging of graves; and
 - (E) all other services rendered; and
- (4) shall use and disburse the money received for the preservation, care, and improvement of the cemetery or cemeteries over which it has control and management.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-18

Purchase of property

23-14-65-18 Sec. 18. (a) A cemetery board may purchase on behalf of the municipality any other property for cemetery purposes that is located within five (5) miles from the corporate limits of the municipality.

(b) A cemetery board may purchase property that:

- (1) adjoins; or
- (2) is located conveniently near;

a cemetery that is under the control of the board for additions to the cemetery. The property must be used, held, and managed in the same manner as the adjoining or nearby cemetery or cemeteries, but is subject to the approval of the executive and legislative body of the municipality.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-19

Financial report; budget; expenditure of money

23-14-65-19 Sec. 19. (a) During January of each year, a cemetery board shall make a report to the legislative body of the municipality. The report must:

- (1) provide information on:
 - (A) the financial condition of the cemetery board; and
 - (B) the business done by the cemetery board during the previous year; and
- (2) include a statement showing the receipts and expenditures of the cemetery board for the year.

(b) A cemetery board shall annually prepare a budget for the cemetery or cemeteries under its control in the same manner as other offices and departments of the municipality prepare budgets. The budget of the cemetery board is subject to review under the budget statutes applying to municipalities.

(c) A cemetery board may not expend funds without prior appropriation by the legislative body of the municipality. If the revenues of the cemetery board are not sufficient to meet the:

- (1) current operating expenses; and
- (2) amounts to be paid for the purchase of cemetery lands or other property;

the deficiency in the revenues may be resolved through an appropriation from the general fund of the municipality.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-20

Awarding of contracts

23-14-65-20 Sec. 20. A cemetery board shall award contracts in accordance with IC 5-16-1 and IC 5-17-1.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-21

Eminent domain

23-14-65-21 Sec. 21. (a) A cemetery board may exercise the power of eminent domain:

- (1) within the boundaries of the municipality; and
- (2) also outside the municipality, within a distance of five (5) miles from the corporate limits of the municipality;

for the purpose of acquiring additional cemetery lands.

(b) A cemetery board may pay damages to landowners for the lands and property taken or injuriously affected, proceeding in accordance with the statutes applying to municipalities when

exercising the power of eminent domain.

(c) A cemetery board may bring suit in the name of the cemetery board in eminent domain proceedings and in other matters whenever the action is necessary to protect the interests of the cemetery board in its conduct and discharge of its duties or obligations, rights, and privileges. A suit may be brought against the cemetery board in its own name.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-22

Delivery of money to controller or clerk-treasurer; payment of expenses

23-14-65-22 Sec. 22. (a) A cemetery board shall daily deliver all money, funds, and revenues it receives to the controller or clerk-treasurer of the municipality, who shall give the board a receipt. The amounts delivered by the cemetery board shall be credited to the account of the cemetery board and deposited in accordance with IC 5-13-6.

(b) All expenses incurred by the cemetery board shall be paid by claims allowed and signed by a majority of the cemetery board. The claims shall be delivered to the controller or clerk-treasurer of the municipality, and warrants in payment of the claims shall be drawn on the municipal treasury.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-23

Acceptance and receipt of real and personal property

23-14-65-23 Sec. 23. (a) A cemetery board may accept and receive real and personal property:

- (1) through gift, legacy, or bequest; and
- (2) upon terms, conditions, or trusts that the donor or testator designates;

for use concerning the operation, maintenance, and preservation of cemeteries or a part of a cemetery.

(b) The property received under subsection (a) is exempt from all taxation.

(c) If:

- (1) a cemetery board receives money under subsection (a); and
- (2) the money is not required currently to carry out the purpose or trusts upon which the money was received;

the cemetery board shall invest the money in accordance with IC 5-13-9. For investment purposes under this subsection, the cemetery board shall give preference to the purchase of bonds or securities issued and negotiated by the municipality.

(d) A cemetery board shall use the income from securities purchased under subsection (c) to carry out the trusts upon which the gift was made.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-24

Placement of bonds or other securities in safety deposit box

23-14-65-24 Sec. 24. To protect bonds or other securities held by a cemetery board, the cemetery board shall place them in a safety deposit box in the vault of a reliable financial institution located in the municipality. One (1) key to the box shall be retained by each of the following:

- (1) A member of the cemetery board who is designated by the cemetery board.
- (2) The controller or clerk-treasurer of the municipality.
- (3) The financial institution.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-25**Improvement and development of cemetery; adoption of resolution**

23-14-65-25 Sec. 25. (a) If the improvement and development of a cemetery will:

- (1) provide relief for the unemployed;
- (2) be a stimulus to the industry of the municipality;
- (3) be a suitable project and eligible for financing as a self-liquidating project by:
 - (A) an agency of the federal government; or
 - (B) an individual, firm, limited liability company, or corporation; and
- (4) result in no cost to the municipality;

the cemetery board that has or would have control and management of the cemetery may adopt a resolution expressing the determination of the board to proceed with the improvement and development of the cemetery.

(b) After adopting a resolution under subsection (a), the cemetery board may do anything necessary to secure the funds that are necessary to make the improvements and provide for the developments.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-26**Payment of preliminary expenses for preparation of grant application; powers of cemetery board in improvement and development of cemetery**

23-14-65-26 Sec. 26. (a) In seeking funds for the improvement and development of a cemetery, a cemetery board may pay all preliminary expenses that the cemetery board incurs in preparing and presenting an application to a federal agency or other agency having authority to grant aid to self-liquidating projects. The expenses may be paid out of funds at the disposal of the cemetery board.

(b) Upon the adoption of its resolution of determination under section 25 of this chapter, the cemetery board shall follow the procedure established by statute for the establishment of a sewage disposal plant by the municipality.

(c) In the improvement and development of a cemetery, a

cemetery board has the same powers as the board of public works or board of public works and safety of a city, including the power to do the following:

- (1) Create the necessary sinking fund.
- (2) Pledge the receipts of the cemetery board.
- (3) Fix the rates and charges of the cemetery board at a level sufficient to pay the obligations and mortgage of the cemetery board.
- (4) Otherwise obligate the property under the control of the cemetery board to secure the payment of the obligations of the cemetery board as they mature, including interest.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-27

Management and control of cemetery

23-14-65-27 Sec. 27. A cemetery board has exclusive management and control of a cemetery or cemeteries transferred to or acquired by the cemetery board, including:

- (1) all of the property, whether real, personal, or mixed, acquired by the cemetery board for cemetery purposes; and
- (2) the part of a public road or street that passes through the cemetery.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-28

Rules; enforcement

23-14-65-28 Sec. 28. (a) A cemetery board may do the following:

- (1) Make reasonable rules and regulations for the management, control, direction, care, and maintenance of the property under the control of the cemetery board.
- (2) Make and enforce reasonable regulations respecting the placement and erection of markers, monuments, tombstones, and mausoleums that any person desires to place or erect in the cemetery.
- (3) Seize and impound animals running at large in the cemetery and establish a suitable place for impounding them, assessing the reasonable costs to the owner.
- (4) Vacate streets, alleys, roads, or highways, or parts of them, lying within lands under the control of the cemetery board in the same manner as is prescribed under the powers of street improvement authority of the municipality.
- (5) Provide proper facilities for furnishing electric lighting, water, and sewer facilities in the cemetery, ordering a public utility to construct and install equipment that is necessary for these purposes.

(b) For the purposes of making rules and regulations for the management and control of property under subsection (a)(1), a cemetery board may request from the police authority of the municipality the manpower necessary to carry out and enforce the rules and regulations of the cemetery board. The police authority

shall comply with the request to the extent that it is able to comply at the time the request is made, considering all other obligations and duties of the police authority. If the cemetery board and the police authority disagree over these matters, the controversy shall be settled by an order of the executive of the municipality.

As added by P.L.52-1997, SEC.39.